

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS (FKA BANKERS TRUST  
COMPANY) and JP MORGAN CHASE  
BANK in their separate capacities and as  
agents for the pre- and post-petition lenders of  
Fleming Companies, Inc.; GENERAL  
ELECTRIC CAPITAL CORPORATION;  
C&S WHOLESALE GROCERS, INC.; THE  
POST-CONFIRMATION TRUST OF  
FLEMING COMPANIES, INC.; ROBERT  
KORS; CORE-MARK HOLDINGS INC. and  
DOES 1 to 200

Defendants.

Case No. 01:07 CV 7634 (WHP)  
ECF Case

AFFIDAVIT OF SAMANTHA BENSON IN SUPPORT OF THE PCT'S AND ROBERT  
KORS' MOTION FOR SUMMARY JUDGMENT

**AFFIDAVIT OF SAMANTHA BENSON**

I, Samantha Benson, testify as follows:

1. I am employed as Michael Baumann's administrative assistant at Kirkland & Ellis LLP's Los Angeles office. I have worked with Mr. Baumann for nine years, and assist him in preparing for hearings, managing his calendar and scheduling his travel arrangements, among other things.

2. Mr. Baumann had a hearing scheduled in Honolulu, Hawaii on August 14, 2007. I made his travel arrangements for this trip. He was scheduled to leave Los Angeles on August 13, 2007, and return after his hearing on August 14, 2007. I recall that he needed to return immediately after his hearing in Hawaii because he had another hearing scheduled in Los Angeles Superior Court on August 16, 2007, for which he needed to prepare.

3. On the afternoon of August 13, 2007, Mr. Baumann called me from Honolulu, Hawaii to tell me that his hearing had been cancelled on his way there. He asked me to rebook his flight. I did, booking him on a flight that left Honolulu, Hawaii at around 10:15 p.m. on August 13, 2007. That flight was scheduled to arrive in Los Angeles early on the morning of August 14, 2007.


4. Mr. Baumann returned to Los Angeles and left the airport at around 6:30 a.m. on August 14, 2007. I know this because he gave me his parking receipt (along with other receipts related to his Hawaii trip) to process for expense reimbursement. A true and correct copy of this parking receipt is attached as Exhibit A.

5. Mr. Baumann worked out of his home on August 14, 2007. Because we needed to prepare for his August 16, 2007 hearing, I spoke to him frequently throughout the course of that day, with me calling him at his home and him calling me from his home. Given the frequency of our conversations, I do not believe there is any way possible that Mr. Baumann could have traveled to and from Florida on August 14, 2007 without me knowing it.

6. Mr. Baumann was in his office on the morning of August 15, 2007.

7. Mr. Baumann has never given me a receipt for air travel to or from Florida for the month of August 2007, nor did I make any arrangements for such travel.

So sworn under penalty of perjury under the laws of the United States of America in Los Angeles, California, on February 25, 2008.

  
Samantha Benson

# **CALIFORNIA JURAT WITH AFFIANT STATEMENT**

- ☒ See Attached Document (Notary to cross out lines 1-6 below)  
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_  
2 \_\_\_\_\_  
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6 \_\_\_\_\_

Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

State of California

County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this

25th day of FEBRUARY, 2008, by  
Date Month Year

(1) SAMANTHA BENSON  
Name of Signer

proved to me on the basis of satisfactory evidence  
to be the person who appeared before me (.) X

(and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence  
to be the person who appeared before me.)

Signature Neal San Diego  
Signature of Notary Public



Place Notary Seal Above

## **OPTIONAL**

*Though the information below is not required by law, it may prove  
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OF SIGNER #1**  
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**RIGHT THUMBPRINT  
OF SIGNER #2**  
Top of thumb here